SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1900.

No. 419.

FOURTEEN DIAMOND RINGS, EMIL J. PEPKE, CLAIMANT, PLAINTIFF IN ERROR,

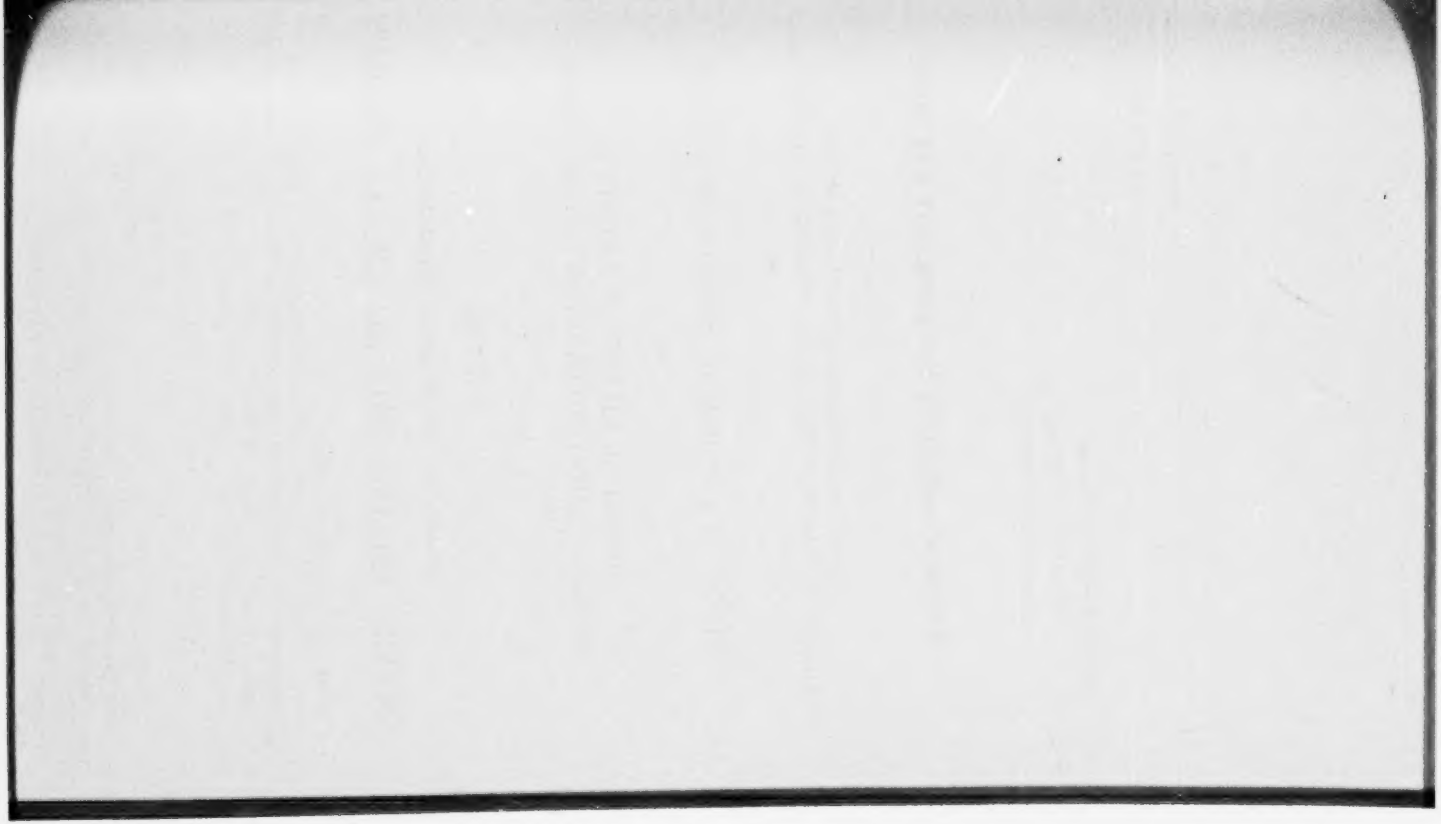
vs.

THE UNITED STATES, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

CHARLES H. ALDRICH,
LAWRENCE HARMON,
Attorneys for Plaintiff in Error.



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STATEMENT OF FACTS.

Emil J. Pepke, the claimant to the property in controversy and plaintiff in error, was born in the United States and is a citizen thereof and of the State of North Dakota. He enlisted on the 29th day of April, 1898, in Company I of the First Regiment of the North Dakota United States Volunteer Infantry, and was with said regiment assigned to duty in the island of Luzon. He continued in such military service until his regiment was ordered to San Francisco on the 31st of July, 1899. He was discharged with his regiment September 25th, 1899, at Camp Presidio, California. He was wounded at the battle of Tobac, Luzon, and his discharge is *cum laude*. (R., 5.)

While thus serving as a soldier in Luzon, and subsequent to the treaty of peace between the United States and the Kingdom of Spain and the exchange of the ratifications thereof, he purchased eleven diamond rings and made loans upon three others to fellow-soldiers, which were subsequently released to him, which fourteen rings he brought with him from Luzon. The plea avers that he returned with his regiment upon a United States transport vessel; that upon his discharge he proceeded to North Dakota, and from there to Chicago, Illinois, where the fourteen rings were seized by a customs officer as having been unlawfully brought into the United States.

An information was filed by the district attorney, and the court below held insufficient a plea filed disclosing these facts and claiming that the property was not subject to customs duties under the Constitution of the United States. The claimant refusing to answer further (R., 5–7), the court decreed the forfeiture and sale of the property in question. (R., 9.)

From this action of the court this writ of error is prosecuted.

ASSIGNMENT OF ERRORS.

The claimant in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon the trial of the cause, to wit:

First. The court erred in sustaining the demurrer of the United States to the answer of this claimant to the information filed herein.

Second. The court erred in holding that the fourteen diamonds described in the information and answer thereto purchased by this claimant in the island of Luzon subsequent to the treaty of peace between the United States and Spain, by which said island was ceded to the United States, and the proclamation thereof by the President of the United States, were subject to the customs laws of the United States and liable for seizure, because no entry under said laws was made at any port of the United States and duty paid thereon; which holding is in violation of the rights of the claimant under the Constitution of the United States in this, to wit:

A. That it denies to the claimant, a citizen of the United States and of the State of North Dakota, the rights, privileges, and immunities of citizens of other States of the United States.

B. That such seizure constituted the taking of the property of the claimant without due process of law.

C. That by article 1, section 8, clause 1, of the Constitution of the United States it is provided that all duties, imposts, and excises shall be uniform throughout the United States; that by the treaty of peace between the United States and Spain and the proclamation thereof by the President of the United States the island of Luzon became a part of the United States, and to impose a duty upon goods or merchandise purchased by the claimant subsequent to such proclamation, and brought by him into the United States as in said answer set forth, violates said provision of the Constitution.

BRIEF.

I.

BY THE TREATY OF PEACE BETWEEN THE UNITED STATES AND SPAIN SIGNED AT THE CITY OF PARIS ON DECEMBER 10, 1898, AND THE EXCHANGE OF RATIFICATIONS ON APRIL 11, 1899, THE PHILIPPINE ISLANDS BECAME A PART OF THE UNITED STATES; THE GOVERNMENT AND THE CITIZENS OF THE UNITED STATES BOTH ENTER SAID ISLANDS UNDER THE AUTHORITY OF THE CONSTITUTION, WITH THEIR RESPECTIVE RIGHTS DEFINED AND MARKED OUT; THE FORMER CAN EXERCISE NO POWER OVER THE PERSON OR PROPERTY OF A CITIZEN OF THE UNITED STATES BEYOND WHAT THAT INSTRUMENT CONFERS, NOR LAWFULLY DENY ANY RIGHT WHICH IT HAS RESERVED.

New Orleans v. *United States*, 10 Pet., 662, 737.
Insurance Companies v. *Canter*, 1 Pet., 511, 542.
Lessee of Pollard's Heirs v. *Kibbe*, 14 Pet., 353, 376, 377.
Johnson & Graham's Lessee v. *McIntosh*, 8 Wheat., 543, 589, 590.
Dred Scott v. *Sandford*, 19 How., 398, 447, 448.
United States, Lyon, et al. v. *Huckabee*, 18 Wall., 414, 434.
Mormon Church v. *United States*, 136 U. S., 1, 42, 43.
United States v. *Percheman*, 7 Pet., 51.
Delassus v. *United States*, 9 Pet., 117.
Mitchel v. *United States*, 9 Pet., 711.
Strother v. *Lucas*, 12 Pet., 410, 438.
Calvin's Case, 7 Coke, 17.
Penn v. *Lord Baltimore*, 1 Ves., 445.
Fong Yue Ting v. *United States*, 149 U. S., 716, 738.

Cross v. *Harrison*, 16 How., 164.
Fleming v. *Page*, 9 How., 603.
National Bank v. *Yankton County*, 101 U. S., 129, 133.
Morris v. *United States*, 174 U. S., 196, 237.
"*City of Panama*," 101 U. S., 453, 460.
Pollard v. *Hagan*, 3 How., 212, 225.
Leitensdorfer et al. v. *Webb*, 20 How., 176.
Murphy v. *Ramsey*, 114 U. S., 44, 45.
Chicago & Pacific Railway Co. v. *McGlinn*, 114 U. S., 542, 546.
Springville v. *Thomas*, 166 U. S., 707, 708.
American Publishing Co. v. *Fisher*, 166 U. S., 464, 466.
Thompson v. *Utah*, 170 U. S., 343, 347, 348.
Capital Traction Co. v. *Hof*, 174 U. S., 1, 5.
Loughborough v. *Blake*, 5 Wheat., 317, 319.

II.

BEING A PART OF THE UNITED STATES, THE PHILIPPINE ISLANDS ARE SUBJECT TO THE PROVISIONS OF CLAUSE 1, SECTION 8, ARTICLE I, AND OF CLAUSES 5 AND 6, SECTION 9, ARTICLE I, OF THE CONSTITUTION OF THE UNITED STATES. AND AS THERE IS NOTHING DIFFERENTLY STIPULATED IN THE TREATY WITH RESPECT TO COMMERCE, IT BECAME INSTANTLY BOUND AND PRIVILEGED BY THE LAWS WHICH CONGRESS HAD PASSED TO RAISE A REVENUE FROM DUTIES ON IMPORTS AND TONNAGE.

Loughborough v. *Blake*, 5 Wheat., 317.
Cohens v. *Virginia*, 6 Wheat., 264, 414.
Talbott v. *Silver Bow County*, 139 U. S., 438, 444.
Knowlton v. *Moore*, 178 U. S., 41, 88.
Gibbons v. *District of Columbia*, 116 U. S., 404, 407, 408.
Dred Scott v. *Sandford*, 19 How., 398, 450.
Crandall v. *State of Nevada*, 6 Wall., 35, 48, 49.
Slaughterhouse Cases, 16 Wall., 73.
President's Message (1899), 50.
United States v. *Dickinson*, 15 Pet., 161.
Cross v. *Harrison*, 16 How., 164.
Synopsis of Treasury Decisions (1868), 10, 20.

III.

THE PRESIDENT OF THE UNITED STATES HAS NO LEGISLATIVE POWER. THE IMPOSITION OF CUSTOMS DUTIES UPON COMMERCE BETWEEN THESE ISLANDS AND OTHER PARTS OF THE UNITED STATES AFTER THE TREATY OF PEACE AND EXCHANGE OF RATIFICATIONS BY EXECUTIVE ORDER IS WITHOUT LAWFUL AUTHORITY, AND THE SEIZURE OF THE PROPERTY OF THE PLAINTIFF IN ERROR, A CITIZEN OF THE UNITED STATES, UNDER SUCH PRETENDED AUTHORITY, CONSTITUTES A TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

United States v. *Eaton*, 144 U. S., 677.
Cross v. *Harrison*, 16 How., 164.
Campbell v. *Hall*, Cowper, 204, 208.
Bancroft, History of United States, vol. 3, 166.

ARGUMENT.

I.

By the treaty of December 10th, 1898, proclaimed April 11th, 1899, it is provided that "Spain cedes to the United States the archipelago known as the Philippine Islands and comprehending the islands lying within the following line" (here follows a description by metes and bounds).

For this grant the United States paid a cash consideration of twenty million dollars, and the state of war theretofore existing between the two powers was terminated.

Spain had been the admitted owner of these islands since their discovery by Magellan, in 1521, and their subsequent occupation by Spain. It is not necessary to inquire whether this occupation was complete as against the savage or semicivilized peoples who were there and have since inhabited the islands. It is like an accepted principle of international and private law that Spain exercised complete and unquestioned sovereignty over them. These tribes were restless under this sovereignty and often sought to rid themselves of what even they recognized as the paramount authority. It is sufficient for any discussion that may grow out of this cession that such efforts on the part of the natives did not reach the dignity of war in the opinion of any of the recognized powers of the earth whose relations between one another constitute the laws of nations. The insurrectionists were never recognized in any way and the trouble was, as a matter of law, simply a question of police between Spain and her subjects or native inhabitants of her territory.

War intervening between the United States and Spain, our Navy entered the harbor of Manila as a Spanish harbor and carried on offensive operations in that locality against Spain. The treaty of peace so far as it relates to these islands constitutes an absolute grant to the United States both of the land and waters within the defined boundaries, and of all sovereignty and dominion over them; all that Spain granted the United States received, subject only that the political sovereignty thus received was subject to the Constitution. (*New Orleans* v. *The United States*, 10 Pet., 662, 737.)

The right of the United States to acquire territory by all the means recognized in international law is now too well established to require argument or illustration. (*Insurance Companies* v. *Canter*, 1 Pet., 511, 542; *Lessee of Pollard's Heirs* v. *Kibbe*, 14 Pet., 353, 376, 377; *Johnson & Graham's Lessee* v. *McIntosh*, 8 Wheat., 543, 589, 590; *Dred Scott* v. *Sandford*, 19 How., 398, 447, 448; *United States, Lyon, et al.* v. *Huckabee*, 16 Wall., 414, 434; *Mormon Church* v. *United States*, 136 U. S., 1, 42, 43.)

Having rightfully acquired the full dominion and control of these islands, subject to the rights of occupancy of the tribes or peoples that dwell therein and whose title may be extinguished by purchase as the United States and they may agree, or who may, on the other hand, be educated, and when fitted therefor be admitted to citizenship, as in the case of the Indians occupying the lands acquired through other treaties, it seems proper to inquire whether by such cession the territory became a part of the United States. In these recent days of constitutional exposition a new doctrine is promulgated, and it is asserted that they

became a part of the United States in an international sense but not in a constitutional sense. We have denominated this a new doctrine. By this we mean as applied to an absolute and unqualified cession of territory and sovereignty thereof and the acceptance by the other sovereign power of such grant. It is not denied that it is competent for sovereign States by treaty to provide for a qualified ownership or use by one or the other of the contracting parties of territory owned by one of them or the joint use of such territory for certain purposes. This has been often done. It is contended, however, that one sovereign can not grant away its sovereignty over defined territory to another power and by the same deed the grantee stipulate to take less than the grant. In *New Orleans* v. *United States*, 10 Pet., 662, 736, 737, the court, in holding that the sovereign rights belonging to the kings of Spain and France in public docks and quays ceded to the United States in the cession of Louisiana Territory did not authorize the United States to interfere therewith in the city of New Orleans, did not hold that any rights remained in these royal owners or failed to pass to the grantee. It held that "the Government of the United States is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress can not, by legislation, enlarge the Federal jurisdiction, nor can it be enlarged under the treaty-making power." The case held that under the limitations of the Federal Government, and the provision that the powers not granted were reserved to the people, the people of the State of Louisiana controlled these quays. There was no sovereign power left floating as a derelict upon the international sea, as is necessary under this constitutional discovery. The treaty-making power as defined by the Constitution has accepted an unqualified grant of territory and sovereignty in these islands. In the case of Cuba there is a qualification.

It is true that article 9 of the treaty provides "the civil rights and political status of the native inhabitants of the territories hereby ceded shall be determined by Congress." This does not refer to the territory acquired, but to the status of the Spanish subjects and native inhabitants, and is a mere declaration of the accepted principles of international law applicable thereto, as repeatedly declared in this court. (*United States* v. *Pecheman*, 7 Pet., 51; *Pelassus* v. *United States*, 9 Pet., 117; *Mitchel* v. *United States*, 9 Id., 711; *Strother* v. *Lucas*, 12 Id., 410, 438.)

It is also an accepted principle of international law that the laws, usages, and municipal regulations in force at the time of the conquest or cession remain in force until changed by the new sovereign. The conqueror may deal with the inhabitants and give them what law he pleases, unless restrained by the capitulation or treaty of cession, but until an alteration be made the former laws continue. (Calvins Case, 7, Coke, 17; *Mitchel* v. *United States*, 9 Pet., 711; *Strother* v. *Lucas*, 12 Pet., 410.) The case at bar, however, does not have to do with the status of any inhabitant of the Philippines or former Spanish subject, and we have called attention to these great fundamental principles, as they serve to show that the modern doctrine that Congress has unlimited power in the territories, and that constitutional limitations upon legislative and executive power do not reach these new possessions until Congress has consented to curtail its own omnipotence by extending the Constitution to them, is without foundation in decision.

The uncivilized native inhabitants, subject to tribal relations, are not considered independent communities having a permanent property in the soil, capable of alienation to private individuals. They are, in the accepted view of civilized nations, mere occupants, and pass with the cession by one sovereignty to another, though such civilized nations assume to respect such rights of occupancy. These tribes and communities are said to remain in a state of nature and have never been admitted into the general society of nations. (*Penn* v. *Lord Baltimore*, 1 Ves., 445.) As stated by Mr. Murray in argument in this court, "they are of that class who are said by jurists not to be citizens, but perpetual inhabitants with diminutive rights" (*Johnson & Graham's Lessee* v. *McIntosh*, 8 Wheat., 543, 569), and this view was sustained by the court.

The Supreme Court having so repeatedly enunciated the American doctrine of territorial acquisition and government, there can be no doubt whatever that the civil status of the civilized inhabitants of our recently acquired territories is precisely the same as that of the inhabitants of New Mexico or Arizona or Alaska. In these Territories, however, and in many of the States, there is a class of inhabitants to whom this status does not extend, namely, the aborigines. They were never considered as forming a part of the "people of the United States." Explaining the condition of the North American Indians from the earliest colonial times, Chief Justice Taney said, in the Dred Scott case (403):

> "The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connections or in government. But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes, and governed by their own laws. Many of these political communities were situated in territories to which the white race claimed the ultimate right of dominion. But that claim was acknowledged to be subject to the right of the Indians to occupy it as long as they thought proper, and neither the English nor Colonial Governments claimed or exercised any dominion over the tribe or nation by whom it was occupied, nor claimed the right to the possession of the territory, until the tribe or nation consented to cede it. These Indian governments were regarded and treated as foreign governments, as much so as if an ocean had separated the red man from the white; and their freedom has constantly been acknowledged, from the time of the first emigration to the English colonies to the present day, by the different governments which succeeded each other. Treaties have been negotiated with them, and their alliance sought for in war; and the people who compose these Indian political communities have always been treated as foreigners not living under our Government. It is true that the course of events has brought the Indian tribes within the limits of the United States under subjection to the white race; and it has been found necessary, for their sake as well as our own, to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occupy. But they may, without doubt, like the subjects of any other foreign government, be naturalized by the authority of Congress, and become citizens of a State, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white popu-

lation, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people."

As the tribal conditions and relations of a large portion of the aborigines of the Philippines and the other islands ceded to us by the treaty with Spain are very similar to those of our American Indians, it would seem to follow, in the absence of special enactment by Congress, that the establishment of American institutions and government in and over those islands does not necessarily constitute all of their inhabitants a part of "the people of the United States" to whom the civic status incident to that appellation is at once extended by territorial expansion. This, then, would appear to be the only exception to the general rule, unless the Chinese, or other Asiatic immigrants, are within the exception. (See *Fong Yue Ting* v. *United States*, 149 U. S., 698, 716.) As to the other inhabitants of these islands, their civil status is no doubt the same as that of the inhabitants of the other territories, who are properly designated as a part of the people of the United States.

The present contention relates to the status of the territory, not of the people, and our proposition is that from the date of the ratification of the treaty of Paris this territory became a part of the United States; Congress and the Executive in dealing therewith are subject to the provisions of the Constitution, and neither can exercise any power over such territory or the person or property of any citizen of the United States therein beyond what that instrument confers, nor lawfully deny any right which it has reserved. The islands have not received the Constitution by the grace of Congress and the President, and they can not keep it away. The contrary proposition proves too much, for if constitutional rights in the territory exist only through legislative action, obviously the benefits of that great instrument may be withdrawn by the same authority, and we have an absolutism asserted with reference to the powers of Congress when dealing with "colonies" (a new term in constitutional discussion in this country) which confessedly does not belong to the Parliament of Great Britain. Fortunately this tribunal, in the discussion of great questions heretofore submitted to it, left no room in our system for the existence of colonies to be governed by unlimited and hence irresponsible power.

In the argument of *Insurance Company* v. *Canter*, 1 Pet., 511, 538, Mr. Webster said:

> "What is Florida? It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions.
>
> "The territory and all within it are to be governed by the acquiring party except where there are reservations by treaty.
>
> "By the law of England, when possession is taken of territories, the king, *jure coronae*, has the power of legislation until Parliament shall interfere. Congress have the *jus coronae* in this case, and Florida was to be governed by Congress as she thought proper.
>
> "What has Congress done? She might have done anything; she might have refused the trial by jury, and refused a legislature. She has given a legislature to be exercised at her will and a government of a mixed nature, in which she has endeavored to distinguish between State and United States jurisdiction, anticipating the future erection of the territory into a State.

"Does the law established in the court at Key West come within the restrictions of the Constitution of the United States? If the Constitution does not extend over this territory the law can not be inconsistent with the national Constitution."

It has been said, because Mr. Webster won his case, that this court held Florida was not a part of the United States and the Constitution did not extend over that part of the territory. Such a statement is inaccurate. The court simply held that a case in admiralty is not one arising under the Constitution and laws of the United States, and therefore not within the constitutional grant of judicial power, and that a condemnation of the cotton in question by a court created by act of the Territorial legislature organized in a different manner than constitutional courts was valid.

Upon the two points which Mr. Webster made, as above quoted, the court expressed its disapproval in the following language (542):

"The Constitution confers absolutely on the Government of the Union the powers of making war and of making treaties; consequently that Government possesses the power of acquiring territory, either by conquest or by treaty.

"The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose. On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers their allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the State.

"On the 2nd of February, 1819, Spain ceded Florida to the United States. The 6th article of the treaty of cession contains the following provision: 'The inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States.'"

The second contention of Mr. Webster was answered by the great Chief Justice as follows:

"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the Government till Florida shall become a State. In the meantime Florida continues to be a Territory of

the United States, governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.'

"Perhaps the power of governing a Territory belonging to the United States which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned."

In *Pollard's Heirs* v. *Kibbe*, 14 Pet., 356, 376, 377, the court said:

"That such incorporation was by acts 'of sovereign power by the United States' exerted by military operations, expelling the existing authority of Spain and compelling the inhabitants to submit to that of the United States, so far from diminishing, increases their constitutional and treaty obligations; for such forced submission is in the nature of articles of capitulation, the observance of which is enjoined by the laws and practice of all civilized nations. (1 Pet., 542.) The proclamation of the President and the acts of Congress declared the terms on which the United States established their authorities; the inhabitants submitted and thereby became entitled to the threefold protection of the Constitution, treaty, and the law of nations." (2 Dall., 1, etc.)

It has been said that this case and others arising under the Louisiana treaty are to be distinguished from the present cases because the third article of the Louisiana treaty bound the United States to protect and maintain the inhabitants of the ceded territory "in the free enjoyment of their property until they were incorporated into the Union," and when they were so incorporated, to admit them "to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

We have seen that Chief Justice Marshall suggested an answer to this distinction when he said, in *Insurance Co.* v. *Canter*, 1 Pet., *supra:*

"It is unnecessary to inquire whether this is not their condition independent of stipulation."

In the case of *Pollard's Heirs* v. *Kibbe* the court went further and said (377):

"It matters not by what right the United States held the disputed territory at the time of its incorporation into the Union. Had it been done without the color of right, or had east Florida been so incorporated before the treaty of 1819, the consequences would have been the same; by the very and sole act of such incorporation the inhabitants became citizens of the United States, their property was protected, and alien proprietors became entitled to all rights secured to them by any treaty between their sovereign and the United States."

In *Cross* v. *Harrison*, 16 How., 164, this court held duties collected in California between February 3, 1848 (the date of the treaty of peace), and November 13, 1849 (when the collector entered upon the duties of

his office), were not illegally exacted and could not be recovered back by the importer.

While California was in the military occupation of the United States, and prior to the treaty of peace between the United States and Mexico, Colonel Mason, styling himself governor of California, established port regulations, under directions of the President of the United States, prescribing the conditions under which American and foreign vessels might be admitted into the ports of California and regulating import duties.

The war tariff was collected by officers of the Army and Navy.

The treaty of peace was concluded February 3, 1848, and ratifications exchanged May 30, 1848.

On July 26, 1848, Colonel Mason, still styling himself governor, prescribed customs regulations and appointed collectors.

The reason for his action was stated in his circular of August 14, 1848:

> "In like manner, if all customs were withdrawn and the ports thrown open free to the world, San Francisco would be made the depot of all the foreign goods in the North Pacific, to the injury of our revenue and the interests of our own merchants To prevent this great influx of foreign goods into the country duty free, I feel it my duty to attempt the collection of duties according to the United States tariff of 1846. This will render it necessary for me to appoint temporary collectors, &c., in the several ports of entry, for the military force is too much reduced to attend to those duties.
>
> "I am fully aware that in taking these steps I have no further authority than that the existing government must necessarily continue until some other is organized to take its place, for I have been left without any definite instructions in reference to the existing state of affairs. But the calamities and disorders which would surely follow the absolute withdrawal of even a show of authority, impose on me, in my opinion, the imperative duty to pursue the course I have indicated until the arrival of dispatches from Washington (which I hope are already on their way) relative to the organization of a regular civil government. In the meantime, however, should the people refuse to obey the existing authorities, or the merchants refuse to pay any duties, my force is inadequate to compel obedience."

The Secretary of State, in a dispatch of October 7, 1848, took the view which, if applied in this case, would be decisive against the claim of the Government to the property in controversy. He said (page 184):

> "The President, in his annual message at the commencement of the next session, will recommend all these great measures to Congress in the strongest terms and will use every effort consistent with his duty to insure their accomplishment.
>
> "In the meantime the condition of the people of California is anomalous, and will require, on their part, the exercise of great prudence and discretion. By the conclusion of the treaty of peace, the military government which was established over them under the laws of war, as recognized by the practice of all civilized nations, has ceased to derive its authority from this source of

power. But is there, for this reason, no government in California? Are life, liberty, and property under the protection of no existing authorities? This would be a singular phenomenon in the face of the world, and especially among American citizens, distinguished as they are above all other people for their law-abiding character. Fortunately, they are not reduced to this sad condition. The termination of the war left an existing government, a government *de facto*, in full operation, and this will continue, with the presumed consent of the people, until Congress shall provide for them a Territorial government. The great law of necessity justifies this conclusion. The consent of the people is irresistibly inferred from the fact that no civilized community could possibly desire to abrogate an existing government when the alternative presented would be to place themselves in a state of anarchy beyond protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest.

"This government *de facto* will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land. For this reason no import duties can be levied in California on articles the growth, produce, or manufacture of the United States, as no such duties can be imposed in any other part of our Union on the productions of California. Nor can new duties be charged in California upon such foreign productions as have already paid duties in any of our ports of entry, for the obvious reason that California is within the territory of the United States. I shall not enlarge upon this subject, however, as the Secretary of the Treasury will perform that duty."

The goods over which the controversy arose in this case were brought by a French vessel, and were foreign dutiable goods if entered at any other port of the United States. Payment of duties were here protested and the right to demand such payment denied solely because Congress had not yet established San Francisco as a port of entry or made of it a collection district.

It was made such a district March 3rd, 1849, and a collector appointed November 13, 1849.

The action was brought by Cross, Hobson & Company against Harrison, the military collector who had exacted the duties paid prior to the organization of the collection district, to recover such duties.

The court charged the jury as follows (page 187):

"1. That between the 3rd February, 1848, and the 3rd March, 1849, duties did accrue to the United States on foreign merchandise, not the production of the United States, and on foreign vessels, not of the United States, which were imported into and arrived within the limits of California, as ceded to the United States by the treaty of peace and limits with the Republic of Mexico, signed at Guadaloupe Hidalgo.

"2. That after the act of 3rd March, 1849, erecting the State of California into a collection district of the United States took effect, duties accrued to the United States, both on foreign merchandise, not the production of the United States, and on foreign vessels, not of the United States, imported and brought within the limits of such collection district."

It will not be necessary in the argument of the case at bar to follow the court in its discussion of the right to exact tariff duties upon *foreign merchandise* during the period of military possession and prior to the treaty of peace. The acts complained of in this case were subsequent to the exchange of ratifications and the proclamation thereof by the President and do not relate to foreign merchandise.

This is likewise true as to the discussion with reference to duties exacted between the date of the treaty of peace and the time when official notice of such ratification and exchange were received in California.

Speaking of Colonel Mason's position and decision, the court said (page 193):

> "He may not have comprehended fully the principle applicable to what he might rightly do in such a case, but he felt rightly and acted accordingly. He determined, in the absence of all instruction, to maintain the existing government. The territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. That sovereignty was the United States, under the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in the section in which this power is given. The government, of which Colonel Mason was the executive, had its origin in the lawful exercise of a belligerent right over a conquered territory. It had been instituted during the war by the command of the President of the United States. It was the government when the territory was ceded as a conquest, and it did not cease as a matter of course or as a necessary consequence of the restoration of peace. The President might have dissolved it by withdrawing the army and navy officers who administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the Government. And the more so, as it was continued until the people of the territory met in convention to form a State government, which was subsequently recognized by Congress under its power to admit new States into the Union.
>
> "In confirmation of what has been said in respect to the power of Congress over this territory, and the continuance of the civil government established as a war right until Congress acted upon the subject, we refer to two of the decisions of this court, in one of which it is said in respect to the treaty by which Florida was ceded to the United States: 'This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition independently of stipulations. They do not, however, participate in political power; they do not share in the Government until Florida shall become a State. In the meantime Florida con-

tinues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States. Perhaps the power of governing a Territory belonging to the United States which has not, by becoming a State, acquired the means of self-government may result necessarily from the facts that it is not within jurisdiction of any particular State and is within the power and jurisdiction of the United States. The right to govern may be the natural consequences of the right to acquire territory.' *American Insurance Co.* v. *Canter*, 1 Pet., 542–3.

"The court afterwards, in the case of the *United States* v. *Gratiot*, 14 Pet., 526, repeats what it said in the case of Canter in respect to that clause of the Constitution giving to Congress the power to make all needful rules and regulations respecting the territory or other property of the United States."

Page 195:

"Our conclusion, from what has been said, is that the civil government of California, organized as it was from a right of conquest, did not cease or become defunct in consequence of the signature of the treaty or from its ratification. We think it was continued over a ceded conquest without any violation of the Constitution or laws of the United States, and that until Congress legislated for it the duties upon foreign goods imported into San Francisco were legally demanded and lawfully received by Mr. Harrison, the collector of the port, who received his appointment according to instructions from Washington from Governor Mason."

Page 196:

"It was urged that our revenue laws covered only so much of the territory of the United States as had been divided into collection districts, and that out of them no authority had been given to prevent the landing of foreign goods or to charge duties upon them, though such landing had been made within the territorial limits of the United States. To this it may be successfully replied that collection districts and ports of entry are no more than designated localities within and at which Congress had extended a liberty of commerce in the United States, and that so much of its territory as was not within any collection district must be considered as having been withheld from that liberty. It is very well understood to be a part of the law of nations that each nation may designate, upon its own terms, the ports and places within its territory for foreign commerce, and that any attempt to introduce foreign goods elsewhere within its jurisdiction is a violation of its sovereignty. It is not necessary that such should be declared in terms, or by any decree or enactment, the expressed allowances being the limit of the liberty given to foreigners to trade with such nation. Upon this principle the plaintiffs have no right to trade with California with foreign goods, excepting from the permission given by the United States under the civil government and war tariff which had been established there. And when the country was ceded as a conquest, by a treaty of peace, no larger liberty to trade resulted. *By the ratifications of the treaty, Cali-*

fornia became a part of the United States. And as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage."

And so we assert here that immediately upon the exchange of the ratifications of the treaty of peace with Spain the Philippine Islands, including the island of Luzon, "became a part of the United States; and, as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by" the limits placed upon the power of Congress under the Constitution of the United States.

The court was careful to repeat again and again that the controversy was as to the right to admit *foreign* goods. Every inference, as well as the express language of the opinion, denies the right to levy tribute upon domestic commerce, as, for example, between New York and California.

The court says, page 198:

"We will here briefly notice those objections which preceded that which has been discussed. The first of them, rather an assertion than an argument—that there was neither treaty nor law permitting the collection of duties—has been answered, it having been shown that the ratifications of the treaty made California a part of the United States, and that, as soon as it became so, the Territory became subject to the acts which were enforced to regulate foreign commerce with the United States, after those had ceased which had been instituted for its regulation as a belligerent right.

"The second objection states a proposition larger than the case admits, and more so than the principle is, which secures to the inhabitants of a ceded conquest the enjoyment of what had been their laws before, until they had been changed by the new sovereignty to which it had been transferred. In this case foreign trade has been changed in virtue of a belligerent right before the territory was ceded as a conquest; and after that had been done by a treaty of peace, the inhabitants were not remitted to those regulations of trade under which it was carried on whilst they were under Mexican rule, because they had passed from that sovereignty to another whose privilege it was to permit the existing regulations of trade continued, and by which only they could be changed. We have said, in a previous part of this opinion, that the sovereignty of a nation regulated trade with foreign nations, and that none could be carried on except as the sovereignty permits it to be done. In our situation that sovereignty is the constitutional delegation to Congress of the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.'"

This case must be held to overrule much that was said *obiter dicta* in *Fleming* v. *Page*, 9 How., 603. It was there held that the capture and occupation of Tampico by the arms of the United States, during the war with Mexico, though sufficient to cause it to be regarded by other nations as part of our territory, did not make it a part of the

United States under our Constitution and laws; it remained a foreign country within the meaning of the revenue laws of the United States.

The facts easily distinguish the case from the later one of *Cross* v. *Harrison*. The occupation of the territory was, and in all cases of that character is apt to be, only temporary or for military purposes. After the territory is ceded the occupation is presumably permanent and the sovereignty complete, in that the Government, by accepting the cession, has evinced an intention to make the territory permanently its own.

The Chief Justice (Taney) stated this difference by calling attention to the difference in the power exercised. While admitting the right to acquire territory by conquest, he held that this could be so done so as to make the territory a part of the Union only by the treaty-making power, and not by the President in his capacity as commander of our Army. Military occupancy made it our territory as against the citizens of every other nation—as to our nation it could only be so held through a treaty of cession.

The inference from this decision is irresistibly in favor of our contention that by the treaty the islands ceded by Spain became an integral part of the United States, and subject to our laws.

The court said (page 615):

> "But yet it was not a part of this Union. For every nation which acquires territory by treaty or conquest holds it according to its own institutions and laws."

It is true the court gives examples which are strongly against our contention, when it says (page 617):

> "This construction of the revenue laws has been uniformly given by the administrative department of the Government in every case that has come before it. And it has, indeed, been given in cases where there appears to have been stronger ground for regarding the place of shipment as a domestic port. For, after Florida had been ceded to the United States, and the forces of the United States had taken possession of Pensacola, it was decided by the Treasury Department that goods imported from Pensacola before an act of Congress was passed erecting it into a collection district, and authorizing the appointment of a collector, were liable to duty. That is, that, although Florida had, by cession, actually became a part of the United States, and was in our possession, yet, under our revenue laws, its ports must be regarded as foreign until they were established as domestic by act of Congress; and it appears that this decision was sanctioned at the time by the Attorney-General of the United States, the law officer of the Government. And, although not so directly applicable to the case before us, yet the decisions of the Treasury Department in relation to Amelia Island and certain ports in Louisiana, after that province had been ceded to the United States, were both made upon the same grounds. And in the latter case, after a custom-house had been established by law at New Orleans, the collector at that place was instructed to regard as foreign ports Baton Rouge and other settlements still in the possession of Spain, whether on the Mississippi, Iberville, or the seacoast. The Department, in no instance that we are aware of since the estab-

lishment of the Government, has ever recognized a place in a newly acquired country as a domestic port, from which the coasting trade might be carried on, unless it had been previously made so by act of Congress.

"The principle thus adopted and acted upon by the Executive Department of the Government has been sanctioned by the decisions of this court and the circuit courts whenever the question came before them. We do not propose to comment upon the different cases cited in the argument. It is sufficient to say that there is no discrepancy between them. And all of them, so far as they apply, maintain that, under our revenue laws, every port is regarded as a foreign one, unless the custom-house from which the vessel clears is within a collection district established by act of Congress, and the officers granting the clearance exercise their functions under the authority and control of the laws of the United States."

This language would justify taxation of commerce between the Philippines and the United States until Congress had legislated and established a collection district. While this would not be decisive of the case at bar, it would control the principle other than as we have contended.

It would remain to investigate the facts and learn if the goods shipped from Pensacola to other parts of the United States and after the deed of cession were of foreign or domestic origin.

In *United States* v. *Rice*, 4 Wheat., 247, 254, the court had before it the question whether merchandise landed at Castine, Maine, while it was in the possession of the British forces, in 1814, could be subjected to duties after the treaty of February 17, 1815, and the withdrawal of the British forces. It was held that such duties could not be imposed. The court said (Mr. Justice Story):

"By the conquest and military occupation of Castine the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port; and goods imported into it by the inhabitants were subject to such duties only as the British Government chose to require. Such goods were in no correct sense imported into the United States. The subsequent evacuation by the enemy and resumption of authority by the United States did not and could not change the character of the previous transactions. The doctrines respecting the *jus portliminii* are wholly inapplicable to the case. The goods were liable to American duties when imported or not at all. That they were not so liable at the time of importation is clear

from what has been already stated; and when upon the return of peace the jurisdiction of the United States was reassumed they were in the same predicament as they would have been if Castine had been a foreign territory ceded by treaty to the United States, and the goods had been previously imported there. In the latter case there would be no pretense to say that American duties could be demanded; and upon principles of public or municipal law the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority."

This is in conflict with the obiter of *Fleming* v. *Page*, *supra*, and in strict accord with the principles announced in *Cross* v. *Harrison*.

We turn again to *Cross* v. *Harrison*, *supra*, where Justice Wayne said (page 197):

"By the ratification of the treaty *California became a part of the United States*. And as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and *privileged* by the laws which Congress had passed to raise a revenue on duties and tonnage. . . .

"The right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts, and excises shall be uniform throughout the United States. Indeed it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from the payment of the same duties which were chargeable *in the other ports of the United States*."

Cross v. *Harrison* may be summarized as holding:

(*a*) That by the treaty of cession California became a part of the United States.

(*b*) That San Francisco was thereby made a port of the United States, though not yet designated by Congress as such, or made into a collection district.

(*c*) That art. 1, sec. 8, cl. 1, of the Constitution, providing that "all duties, imposts, and excises shall be uniform throughout the United States," applies to and is operative in ceded territory in advance of Congressional action, which we discuss later.

It is a demonstration that even acts of Congress become operative as against foreign merchandise without reenactment, and it is submitted that not a word can be found in the opinion or read between its lines justifying the assertion that the cession did not make California a part of the United States in both a geographical and constitutional sense. The proposition of *Fleming* v. *Page* "that every port is regarded as a foreign one unless the custom-house from which the vessel clears is within a collection district established by act of Congress" is distinctly repudiated. Foreign goods coming into a port in the Philippines are instantly bound by the Dingley tariff act, while goods originating from these islands coming to the United States are instantly privileged by the same act and, it might have been added, by the Constitution.

The case of *Dred Scott* v. *Sanford*, 19 How., 398, is directly in point. The facts of that case need not be repeated here—they are in

a general and inaccurate way commonly known. The case in its results became a subject of party strife and perhaps hastened that inevitable conflict which ended in the civil war. It is a common thing for the advocates of the unlimited power of Congress over the territories to assert that this case was overruled on a hundred battlefields. In the clear atmosphere of this court, where party lines are unknown and political considerations have no place, it is assumed that no such statement will be made, and, if made, we shall spend no time in answering it. That decision which was supposed by many to threaten the Republic will yet prove the corner stone of liberty preserved to our descendants through adherence to its denial of absolute unlimited power to any branch of the Government.

After discussing at length *Insurance Co.* v. *Canter*, 1 Pet., 511, *supra*, and the question whether the power of Congress to govern territories is derived from the clause in the Constitution which confers the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," or was rather a necessary consequence of the right to acquire and possess territory, and reaching a conclusion that the latter was the source of the power, the court, speaking of the limits of such power on the part of Congress, said (pp. 447, 448):

> "We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion. It is a question for the political department of the Government and not the judicial; and whatever the political department of the Government shall recognize as within the limits of the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States, so far as they apply, and to maintain in the territory the authority and rights of the Government, and also the personal rights and rights of property of individual citizens as secured by the Constitution. All we mean to say on this point is, that as there is no express regulation in the Constitution defining the power which the General Government may exercise over the person or property of a citizen in the territory thus acquired, the court must necessarily look to the provisions and principles of the Constitution and its distribution of powers for the rules and principles by which its decision must be governed.
>
> "Taking this rule to guide us, it may be safely assumed that citizens of the United States who migrate to a territory belonging to the people of the United States can not be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The

principle upon which our governments rest, and upon which alone they continue to exist, is the Union of States, sovereign and independent within their own limits in their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority, within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the General Government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted."

Pages 448, 449, 450, 451:

"The power to acquire necessarily carries with it the power to preserve and apply to the purposes for which it was acquired. The form of government to be established necessarily rested in the discretion of Congress. It was their duty to establish the one that would be best suited for the protection and security of the citizens of the United States and other inhabitants who might be authorized to take up their abode there, and that must always depend upon the existing condition of the territory, as to the number and character of its inhabitants and their situation in the territory. In some cases a government consisting of persons appointed by the Federal Government would best subserve the interests of the territory when the inhabitants were few and scattered and new to one another. In other instances it would be more advisable to commit the powers of self-government to the people who had settled in that territory, as being the most competent to determine what was best for their own interests. But some form of civil authority would be absolutely necessary to organize and preserve civilized society and prepare it to become a State; and what is the best form must always depend on the condition of the territory at the time, and the choice of the mode must depend upon the exercise of *a discretionary power by Congress, acting within the scope of its constitutional authority, and not infringing upon the rights of person or rights of property of the citizen who might go there to reside, or for any other lawful purpose.* It was acquired by the exercise of this discretion, and it must be held and governed in like manner until it is fitted to be a State.

"But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of government. The powers of government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined *and limited by the Constitution*, from which it derives its own existence and by virtue of

which alone it continues to exist and act as a government and sovereignty. It has no power of any kind beyond it; and it can not, when it enters a territory of the United States, put off its character and assume discretionary or despotic powers which the Constitution has denied it. It can not create for itself a new character separated from the citizens of the United States and the duties it owes them under the provisions of the Constitution. *The territory being a part of the United States, the Government and the citizens both enter it under the authority of the Constitution, with their respective rights defined* and *marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved.*

"A reference to a few of the provisions of the Constitution will illustrate this proposition.

"For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of the speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.

"Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

"These powers, and others, in relation to rights of person, which is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property are united with the rights of person and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property without due process of law. And *an act of Congress which deprives a citizen of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law.*

"So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a Territory without the consent of the owner, in time of peace; nor in time of war but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a Territory who was convicted of treason, for a longer period than the life of the person convicted; nor take private property for public use without just compensation.

"The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. *And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial government* as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States,

and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself can not do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a Territorial government to exercise them. It could confer no power on any local government established by its authority to violate the provisions of the Constitution."

The court then proceeded to hold that as the Constitution recognized the condition of slavery, it followed that the act of Congress was void, as

"It has no power over the person or property of a citizen but what the citizens of the United States have granted. And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of government, or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government."

The court also said (p. 446):

"And we are satisfied that no one who reads attentively the page in Peters Reports to which we have referred can suppose that the attention of the court was drawn for a moment to the question now before this court, or that it meant in that case to say that Congress had a right *to prohibit a citizen of the United States from taking any property which he lawfully* held into a Territory of the United States.

Summarized, this case holds:

(*a*) That the cession of territory to the United States makes it a part thereof.

(*b*) That it is held until fitted to become a State (this time being in the discretion of Congress) with the powers of the United States strictly defined and limited by the Constitution, both as to the Territory and the citizen.

(*c*) The form of government to be established and the extent of political rights to be accorded the native inhabitants or other persons resident therein is wholly within the discretion of Congress, "*acting within the scope of its constitutional authority and not infringing upon the rights of persons or the rights of the citizen who might go there to reside or for any other lawful purpose. . . . The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved.*"

(*d*) Among the constitutional rights of the citizen which this case

declares Congress has no power to deny is the right to take any property which he lawfully holds into a Territory of the United States and *ex necessitate* from a Territory of the United States.

(*e*) "A power, therefore, in the General Government to obtain and hold colonies and dependent territories over which they might legislate without restriction would be inconsistent with its own existence in its present form. Whatever it acquires it acquires for the benefit of the people of the several States who created it."

(*f*) "*An act of Congress which deprives a citizen of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law.*"

(*g*) "The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. *And this prohibition is not confined to the States, but the words are general and extend to the whole territory over which the Constitution gives this power to legislate, including those portions of it remaining under territorial government*, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States and places the citizen of a Territory, so far as these rights are concerned, on the same footing with citizens of the State, and guards them as firmly and plainly against any inroads which a general government might attempt under the plea of implied or incidental powers."

As further illustrative of these conclusions and of the relations of ceded territory to the United States and its Constitution, we cite *National Bank* v. *Yankton County*, 101 U. S., 129, 133, where the court (Waite, C. J.) said:

> "All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The Territories are but political subdivision of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution."

And *Shively* v. *Bowlby*, 152 U. S., 48, where the court said:

> "By the Constitution, as is now well settled, the United States, having rightfully acquired the Territories, and being the only Government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, Federal and State, all over the Territories, so long as they remain in a Territorial condition. (*American Ins. Co.* v. *Canter*, 1 Pet., 511, 542; *Benner* v. *Porter*, 9 How., 235, 242; *Cross* v. *Harrison*, 16 How., 164, 193; *National Bank* v. *Yankton County*, 101 U. S., 129, 133; *Murphy* v. *Ramsey*, 114 U. S. 15, 44; *Mormon Church* v. *United*

States, 136 U. S., 1, 42, 43; *McAllister* v. *United States*, 141 U. S., 174, 181.)

"We can not doubt, therefore, that Congress has the power to make grants of lands below high-water mark of navigable waters in any Territory of the United States whenever it becomes necessary to do so in order to perform international obligations or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the subjects for which the United States hold the Territory."

In *Morris* v. *United States*, 174 U. S., 196, 237, this court quoted the case just cited approvingly, and said (Mr. Justice Shiras) of the cession by the State of Maryland of the territory in the District of Columbia:

"Upon the acquisition of a territory by the United States, whether by cession from one of the States, or by a treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the whole people and in trust for the several States to be ultimately created out of the territory."

In *Fong Yue Ting* v. *United States*, 149 U. S., 716, 738, the court said (Mr. Justice Brewer):

"The Constitution has potency everywhere within the limits of our territory, and the powers which the National Government may exercise within such limits are those, and only those, given to it by that instrument."

In the "*City of Panama*," 101 U. S., 453, 460, the court said (Mr. Justice Clifford):

"Our Constitution, in its operation, is coextensive with our political jurisdiction, and wherever navigable waters exist within the limits of the United States it is competent for Congress to make provision for the exercise of admiralty jurisdiction, either within or outside of the States; and in organizing Territories Congress may establish tribunals for the exercise of such jurisdiction, or they may leave it to the legislature of the Territory to create such tribunals. Courts of the kind, whether created by an act of Congress or a Territorial statute, are not, in strictness, courts of the United States; or, in other words, the jurisdiction with which they are invested is not a part of the judicial power defined by the third article of the Constitution, but is conferred by Congress in the execution of the general power which the legislative department possesses to make all needful rules and regulations respecting the public territory and other public property."

In *Pollard* v. *Hagan*, 3 How., 212, 225, the court said:

"It can not be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory by treaty or otherwise must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it."

As we have noted, the powers not to be exercised by the United States belong to the people so far as is consistent with our institutions.

In *Leitensdorfer et al.* v. *Webb*, 20 How., 176, the Supreme Court stated the same doctrine: The Territory of New Mexico was conquered in the year 1846 by the Army of the United States. Its former civil government having been overthrown, General Kearney, holding possession for the United States in obedience to the duty of maintaining the security of the inhabitants in their persons and property, ordained, under the sanction and authority of the United States, a code of laws called the "Kearney Code," and set up a provisional or temporary government for the acquired country. "By this substitution of a new supremacy," said Mr. Justice Daniel, delivering the opinion of the court in that case—

> "although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the Government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and occupying authority should ordain."

In *Murphy* v. *Ramsey*, 114 U. S., 44, 45, the court said (Mr. Justice Matthews):

> "The people of the United States, as sovereign owners of the national Territories, have supreme power over them and their inhabitants. In the exercise of this sovereign dominion they are represented by the Government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied from its terms, or in the purposes and objects of the power itself; for it may be well admitted in respect to this, as to every power of society over its members, that it is not absolute and unlimited. But in ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory, and the qualification of those who shall administer it. It rests with Congress to say whether, in a given case, any of the people, resident in the Territory, shall participate in the election of its officers or the making of its laws; and it may, therefore, take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient. The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the States and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the Government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of Government, State, and nation; their political rights are fran-

chises which they hold as privileges in the legislative discretion of the Congress of the United States. This doctrine was fully and forcibly declared by the Chief Justice, delivering the opinion of the court in *National Bank* v. *County of Yankton*, 101 U. S., 129. See also *American Ins. Co.* v. *Canter*, 1 Pet., 511; *United States* v. *Gratiot*, 14 Pet., 526; *Cross* v. *Harrison*, 16 How., 164; *Dred Scott* v. *Sanford*, 19 How., 393. If we concede that this discretion in Congress is limited by the obvious purposes for which it was conferred, and that those purposes are satisfied by measures which prepare the people of the Territories to become States in the Union, still the conclusion can not be avoided that the act of Congress here in question is clearly within that jurisdiction."

In *Chicago and Pacific Railway Co.* v. *McGlinn*, 114 U. S., 542, 546, the court said (Mr. Justice Field):

"It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country—that is, laws which are intended for the protection of private rights—continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect, and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general, that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed. *American Insurance Co.* v. *Canter*, 1 Pet., 542; Halleck, International Law, ch. 34, sec. 14."

In *Mormon Church* v. *United States*, 136 U. S., 1, 42, 43, the court said (Mr. Justice Bradley):

"The power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory and no power to govern it when acquired. The power to acquire territory, other than the terri-

tory northwest of the Ohio River (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories west of the Rocky Mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the Government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories. Having rightfully acquired said territories, the United States Government was the only one which could impose laws upon them, and its sovereignty over them was complete. No State of the Union had any such right of sovereignty over them; no other country or government had any such right. These propositions are so elementary, and so necessarily follow from the condition of things arising upon the acquisition of new territory, that they need no argument to support them. They are self-evident. Chief Justice Marshall, in the case of the *American Insurance Company* v. *Canter*, 1 Pet., 511, 542, well said: 'Perhaps the power of governing a Territory belonging to the United States which has not, by becoming a State, acquired the means of self-government may result necessarily from the facts that it is not within the jurisdiction of any particular State and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned.' And Mr. Justice Nelson, delivering the opinion of the court in *Benner* v. *Porter*, 9 How., 235, 242, speaking of the Territorial governments established by Congress, says: 'They are legislative governments, and their courts legislative courts, Congress, in the exercise of its powers in the organization and government of the Territories, combining the powers of both the Federal and State authorities.' Chief Justice Waite, in the case of *National Bank* v. *County of Yankton*, 101 U. S., 129, 133, said: 'In the organic act of Dakota there was not an express reservation of power in Congress to amend the acts of the Territorial legislature, nor was it necessary. Such a power is an incident of sovereignty and continues until granted away. Congress may not only abrogate laws of the Territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the Territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States.'"

The case of *Murphy* v. *Ramsey*, 114 U. S., 15, is also here cited and quoted.

In *Springville* v. *Thomas*, 166 U. S., 707, 708, the court, having before it the question of the validity of a Territorial law dispensing

with unanimity in common-law trials before a jury, said (Chief Justice Fuller):

> "The supreme court of the Territory held in *Hess* v. *White*, 9 Utah, 61 (and the decision was followed in these cases), that the act of Congress of September 9, 1850, 9 Stat., 453, c. 51, sec. 6, the organic act of the Territory, vested in the Territorial legislature such unlimited legislative power as enabled it to provide that unanimity of action on the part of jurors in civil cases was not necessary to a valid verdict. But defendants contended that the act of Congress as thus interpreted was in violation of the seventh amendment, and the validity of the act was in that way drawn in question. In the view which the Supreme Court took of the act it was obliged to subject it to the test of the Constitution, and accordingly, in deciding that the seventh amendment did not require unanimity of action, the court held in effect that the act of Congress was constitutional although it empowered the Territorial legislature to provide for verdicts by less than the whole number of jurors. The question involved was not a matter of construction of the Territorial act, but the court discussed its validity, and this depended on the validity of the act of Congress giving it the scope which the court attributed to it.
>
> "In this there was error. In our opinion the seventh amendment secured unanimity in finding a verdict as an essential feature of trial by jury in common-law cases, and the act of Congress could not impart the power to change the constitutional rule, and could not be treated as attempting to do so."

This declaration is exceedingly important, as in the decision of the prior cases, *American Publishing Co.* v. *Fisher*, 166 U. S., 464, 466, the court did not decide the case upon the effect of the seventh amendment alone, but called attention to the fact that Congress had by legislation extended the Constitution to the Territory. The effect of the constitutional provisions *ex proprio vigore* was left undetermined, though the inference that it was sufficient we submit was made well nigh irresistible.

In *Thompson* v. *Utah*, 170 U. S., 343, 347, 348, the court, pursuing this subject as to the constitution of Utah providing for a trial in criminal cases not capital by a jury of eight persons, said (Mr. Justice Harlan):

> "That the provisions of the Constitution of the United States relating to the right of trial by jury in suits at common law apply to the Territories of the United States is no longer an open question. *Webster* v. *Reid*, 11 How., 437, 460; *American Publishing Co.* v. *Fisher*, 166 U. S., 464, 468; *Springville* v. *Thomas*, 166 U. S., 707. In the last-named case it was claimed that the Territorial legislature of Utah was empowered by the organic act of the Territory of September 9, 1850, 9 Stat. 453, c. 51, sec. 6, to provide that unanimity of action on the part of jurors in civil cases was not necessary to a valid verdict. This court said: 'In our opinion the seventh amendment secured unanimity in finding a verdict as an essential feature of trial by jury in common-law cases, and the act of Congress could not impart the power to change the constitutional rule and could not be treated as attempting to do so.'

"It is equally beyond question that the provisions of the National Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the Territories of the United States.

"The judgment of this court in *Reynolds* v. *United States*, 98 U. S., 145, 154, which was a criminal prosecution in the Territory of Utah, assumed that the sixth amendment applied to criminal prosecutions in that Territory.

"In *Callan* v. *Wilson*, 127 U. S., 540, 549, 551, which was a criminal prosecution by information in the police court of the District of Columbia, the accused claimed that the right of trial by jury was secured to him by the third article of the Constitution as well as by the fifth and sixth amendments. The contention of the Government was that the Constitution did not secure the right of trial by jury to the people of the District of Columbia; that the original provision, that when a crime was not committed within any State the trial shall be at such place or places as the Congress may by law have directed, had, probably, reference only to offences committed on the high seas; that, in adopting the sixth amendment, the people of the States were solicitous about trial by jury in the States and nowhere else, leaving it entirely to Congress to declare in what way persons should be tried who might be accused of crime on the high seas and in the District of Columbia and in places to be thereafter ceded for the purposes respectively of a seat of government, forts, magazines, arsenals, and dockyards; and, consequently, that that amendment should be deemed to have superseded so much of the third article of the Constitution as related to the trial of crimes by jury. That contention was overruled, this court saying: 'As the guarantee of a trial by jury in the third article implied a trial in that mode and according to the settled rules of the common law, the enumeration in the sixth amendment of the rights of the accused in criminal prosecutions is to be taken as a declaration of what those rules were, and is to be referred to the anxiety of the people of the States to have in the supreme law of the land, and so far as the agencies of the General Government were concerned, a full and distinct recognition of those rules, as involving the fundamental rights of life, liberty, and property. This recognition was demanded and secured for the benefit of all the people of the United States, as well as those permanently or temporarily residing in the District of Columbia, as those residing or being in the several States. There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guarantees of life, liberty, and property—especially of the privilege of trial by jury in criminal cases.' 'We can not think,' the court further said, 'that the people of this District have, in that regard, less rights than those accorded to the people of the Territories of the United States.'"

The cases of *Mormon Church* v. *United States*, 136 U. S., 1; *National Bank* v. *Yankton*, 101 U. S., 129, 133; *Murphy* v. *Ramsey*, 114 U. S., 15, are cited at length to the points that the power of Congress is subject to constitutional limitations, and that the people of the Territories have the civil rights of the people of the States.

And in *Capital Traction Co.* v. *Hof*, 174 U. S., 1, 5, the court (Mr. Justice Gray) said:

> "It is beyond doubt at the present day that the provisions of the Constitution of the United States securing the right of trial by jury, whether in criminal or civil cases, are applicable to the District of Columbia. *Webster* v. *Reid* (1850), 11 How., 437, 460; *Callan* v. *Wilson* (1888), 127 U. S., 540, 550; *Thompson* v. *Utah* (1898), 170 U. S., 343."

It is submitted that these utterances of the court are consistent throughout and establish beyond controversy that the Philippine Islands and Porto Rico are now, and have been since the date of the exchange of ratifications of the treaty of Paris, a part of the United States, a "name," adopting the language of Chief Justice Marshall in *Loughborough* v. *Blake*, 5 Wheat., 317, 319, "given to our great Republic, which is composed of States and Territories," and are held by no one department subject to its arbitrary power and disposition, nor even by all the departments combined. They are the property of the United States in the sense that they are held in trust for the people thereof. The trust is an express one in that its conditions and limitations are clearly defined as subject to the Constitution, which contemplates a government of limited, balanced powers, not one of arbitrary or unlimited ones. The builders of the Republic did not frame a Constitution for the original thirteen States, but for all the lands and peoples which in the beneficent workings of Divine Providence shall come under its benign influence and control. The Republic had its origin in a rebellion against the exaction of taxes by a Parliament where the colonies insisted they had no representatives. In other respects they made their own laws and were largely self-governing. This court has given no warrant for the assertion that the great men who rebelled for such causes and founded a Government based upon a Constitution which for more than a hundred years has been deemed a magna charta of liberty, and who clearly foresaw that the territory then subject thereto was but the borderland of the great Republic of the future, provided by that instrument for the ownership of colonies or dependencies in which neither the native inhabitants nor the citizen soldier of the Republic should have any rights of person or property except by the grace of a military commander or a Congress varying each two years in its membership and ideas.

It is, of course, conceded that the political power of the United States is vested in the States and in their representatives in Congress. The people in the former define or regulate these rights. Congress, as to the Territories, has an absolute discretion as to what political rights the Territory and its inhabitants shall have, if any, and when they shall be admitted into the Union.

This court, as we have seen, has drawn a clear and sharp distinction between political power and the personal and constitutional rights of the inhabitants of a Territory. The former are held at the discretion of Congress; the latter guaranteed "to them as to other citizens by the principles of constitutional liberty which restrain all the agencies of government, State and national." (*Murphy* v. *Ramsey*, 114 U. S., 15, 44, 45.)

II.

Assuming, then, that the Philippine Islands and Porto Rico are a part of the United States, and that in dealing with them and their affairs the agencies of the Government can only exercise such powers as the Constitution confers and are limited by all the powers withheld by that instrument in express terms or by implication, we have next to consider if the Constitution either confers the right upon any or all these agencies to treat these new possessions as foreign territory in the application of the revenue laws of the United States, or if there is anything in that instrument forbidding such treatment.

Section 8, clause 1, of Article I of the Constitution provides:

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

And section 9, clause 5, of Article I provides:

> "No tax or duty shall be laid on articles exported from any State."

And clause 6 of the same article as follows:

> "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another."

These clauses refer to the same general subject and were designed for the same general purpose. The necessity for the Constitution after the successful termination of the war for independence was commercial rather than political. The common debts incurred in the prosecution of the war must be paid; revenue was necessary for that purpose; voluntary contributions from the several States had been proven unsatisfactory. These States were differently situated in size, wealth, and commercial prospects. Some were on the seaboard, had magnificent harbors, cities which gave promise of a great future, while others were small, sparsely settled, and had few natural advantages. Stretching in a narrow line along the Atlantic coast, they differed as widely in climate, character of their population, and products. Obviously it was difficult to harmonize these elements. They had been united in defense of their liberties, in which all held an equal interest. Their honor was equally involved in the common duty of paying the debts of the Confederation. It was a time when ideas of liberty were abroad in the land and each individual, each town, each State zealously watched lest some atom of liberty should be taken away. The miracle of the Constitution is that under these conditions conflicting interests were so harmonized as to secure its adoption. The debates show that this result was reached only after long, weary struggles, in which the two characteristics always present were patriotism and jealousy lest local liberty be sacrificed in the attempt to form a nation.

It was obviously necessary to give the power to regulate commerce to the General Government, and as obviously necessary, if that equality of which the small States and those less fortunately situated in a commercial sense was to be preserved, that this grant of power over com-

merce and taxes should not be an unrestricted one, and hence the provisions of the Constitution above quoted. In the first (sec. 8, cl. 1, Art. I) the term "United States" is used, while in the grant of the broad power to regulate commerce, to which these are so closely related in origin and cause, the word "State" is used. And this new school of constitutional expounders, born of an imaginary question of necessity or expediency growing out of our recent acquisitions, place great emphasis upon the difference in terms, though we fail to see how, even upon their construction, it tends to support their conclusions. For example, the learned solicitor-general in his address before the Pennsylvania Bar Association, June 26, 1900, said:

> "The Constitution gives Congress power to regulate commerce 'among the several States,' and 'to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States.' The early laws of this character applied only within the States. The recent acts have properly been extended to the contiguous Territories which Congress, in its discretion, has seen fit to treat as a part of the United States.
>
> "It is provided that 'no tax or duty shall be laid on articles exported from any State,' but nothing is said about any Territory; and that 'no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another;' but nothing is said about the ports of any Territory.
>
> "The prohibitions of the tenth section of the first article apply only to the States."
>
> 34 American Law Review, 679.

We do not controvert the fact that in some clauses of the Constitution the word States refers to those which exercise political power, and therefore does not embrace the Territories. We insist that in the clauses referred to the term "United States" embraces, as Chief Justice Marshall said in *Loughborough* v. *Blake*, 5 Wheat., 317, "our great Republic, which is composed of States and Territories; the District of Columbia, or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania," and the term State embraces the entire United States, and hence it is beyond the power of the President, by executive order, or Congress, to provide one rate of duty as to commerce between the United States and another as between the Territories, or still another as between the States and Territories; and that it is likewise beyond the power of either or both these branches of the Government to lay a tax or duty on articles exported from a Territory which has become a part of the United States, or make any preference through any regulation of commerce or preference as between a port of one of the original States and of such Territory, or compel vessels bound to or from a port of such territory, or from a port of one of the States, to enter, clear, or pay duties in the other. The issue is thus clearly defined. The contention of the learned Solicitor-General proves too much. If Congress is given power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and "States" as here used does not embrace Territories, whence is derived the power to regulate commerce between the Territories. Congress has only delegated pow-

ers, or such as arise by necessary implication to carry out the powers delegated. The Constitution having expressly declared how far and between what parties Congress may regulate commerce, obviously the power to further regulate it or interfere with commerce as between other parties is not to be inferred. (*Inclusio unius exclusio alterius.*) It certainly could not be implied from "to dispose of and make all needful rules and regulations respecting the territory and other property of the United States," nor from the implied power to acquire territory arising from the power to make war and peace, and the fact we are a nation, for as we have seen, the exercise of these powers can not override the Constitution. It is submitted that the unquestioned right of Congress to regulate commerce in the Territories is derived and can only be derived from cl. 3, sec. 8, Art. I, of the Constitution, and by reading the term "States" as embracing all the territory which they in their united capacity as the United States control. The same is true of clauses 5 and 6 of sec. 9, Art I, of the Constitution.

Such interpretation is authorized by numerous decisions of this court. Thus, in *Talbott* v. *Silver Bow County*, 139 U. S., 438, 444, the court having under consideration the power of the Territories to tax national banks, said (Mr. Justice Brewer):

> "Still further, while the word State is often used in contradistinction to Territory, yet in its general public sense, and as sometimes used in the statutes and the proceedings of the Government, it has the larger meaning of any separate political community, including therein the District of Columbia and the Territories, as well as those political communities known as States of the Union. Such a use of the word State has been recognized in the decisions of this court. Thus, in the early case of *Hepburn* v. *Ellzey*, 2 Cranch, 445, 452, Chief Justice Marshall observed: 'On the part of the plaintiffs it has been urged that (the District of) Columbia is a distinct political society; and is, therefore, a "State," according to the definitions of writers on general law. This is true.' In *Metropolitan Railroad* v. *District of Columbia*, 132 U. S., 1, 9, Mr. Justice Bradley, speaking for the court, declared that 'it is undoubtedly true that the District of Columbia is a separate political community in a certain sense, and in that sense may be called a State.' And in the case of *Geofroy* v. *Riggs*, 133 U. S., 258, 268, a similar construction was given to the use of the word 'State,' and in a clause which seemed on the face to carry a narrower meaning than the language used in section 5219, *supra*. The clause was found in a treaty between France and the United States, and that clause was as follows: 'In all the States of the Union, whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States.' On the face of the language, the word 'State' would seem to refer, not to political communities in general, but to those particular communities which form the States of the Union; yet it was held to include the District of Columbia, this court, by Mr. Justice Field, observing: 'This article is not happily drawn. It leaves in doubt what is meant by "States of the Union." Ordinarily these terms would be held to apply to those political communities exercising various attributes of sovereignty which

compose the United States, as distinguished from the organized municipalities known as Territories and the District of Columbia. And yet separate communities, with an independent local government, are often described as States, though the extent of their political sovereignty be limited by relations to a more general government or to other countries. Halleck on Int. Law, c. 3, sections 5, 6, 7. The term is used in general jurisprudence and by writers on public law as denoting organized political societies with an established government. Within this definition the District of Columbia, under the Government of the United States, is as much a State as any of those political communities which compose the United States.'"

The necessity of uniformity in all duties, imposts, and excises throughout the Territories, as well as the States, is established in *Loughborough* v. *Blake*, 5 Wheat., 317, *supra*. In that case the court had before it the power of Congress to lay a direct tax upon the District of Columbia.

A citizen of the District resisted the tax on the ground of its unconstitutionality. It was admitted that Congress had the power to levy the tax in its capacity as the local legislature for the District, in which case the taxes must be used for the purposes of the District. The tax in question was not to be so used, and its constitutionality was assailed on the ground that the power of Congress to levy direct taxes was limited to the States.

The court (Marshall, C. J.) said (pages 318, 319):

"The 8th section of the 1st article gives to Congress the 'power to lay and collect taxes, duties, imposts and excises' for the purposes thereinafter mentioned. This grant is general, without limitation as to place. It consequently extends to all places over which the Government extends. If this could be doubted, the doubt is removed by the subsequent words which modify the grant. These words are 'but all duties, imposts and excises shall be uniform throughout the United States.' It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania, and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

It follows from this opinion:

(*a*) That the power to tax, levy duties, etc., extends to the entire United States.

(*b*) That the term "United States" embraces "our great Republic, which is composed of States and Territories."

(*c*) That "it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other."

(*d*) It follows from the above that the rights and obligations of the territory thus a part of the United States, and the inhabitants thereof, are measured and tested by the Constitution.

This is said to be a dictum, because the court had before it the question of direct taxes and not one of duties, imposts, or excises; but the contention is against the Government in this case, as the provisions with reference to direct taxes in other parts of the Constitution are in conjunction with apportionment of Representatives among the several States (cl. 3, sec. 2, Art, I), and the requirement that the tax shall be laid in proportion to the census (cl. 4, sec. 9, Art. I), both of which refer to the States and not Territories. The case at bar is one of "duties," concerning which the Constitution is explicit in requiring uniformity, the word tax being omitted from this requirement. (*Knowlton* v. *Moore*, 178 U. S., 41, 88.) If the term "United States" embraced the entire Republic in the one case it does in the other, and it follows that any duty between Porto Rico or the Philippines and the other portions of the United States violates the requirement of uniformity.

It is conceded that Congress, acting as a local legislature, may make unequal taxes in the Territories for Territorial purposes only. (*Gibbons* v. *District of Columbia*, 116 U. S., 404, 407, 408.) This is an exercise of the taxing power. Duties can only be levied for national purposes, and in these uniformity is required.

The contention that "uniformity throughout the United States" signifies a geographical uniformity, and that the requirement that no tax or duty shall be laid on articles exported from any State, and no preferences given as between ports of one State over those of another, embody the same conception, is sustained in *Knowlton* v. *Moore*, 178 U. S., 41, 105, 106. In this opinion the origin and entire history of these clauses is given. It is shown that in their origin and history they remained united until separated by the committee on style. The court said (Mr. Justice White):

> "Thus, it came to pass that although the provisions as to preference between ports and that regarding uniformity of duties, imposts, and excises were one in purpose, one in their adoption, they became separated only in arranging the Constitution for the purpose of style. The first now stands in the Constitution as a part of the sixth clause of section 9 of article 1, and the other is a part of the first clause of section 8 of article 1. By the result, then, of an analysis of the history of the adoption of the Constitution it becomes plain that the words 'uniform throughout the United States' do not signify an intrinsic but simply a geographical uniformity; and it also results that the assertion to which we at the outset referred, that the decision in the *Head Money Cases*, holding that the word "uniform" must be interpreted in a geographical sense, was not authoritative, because that case in reality solely involved the clause of the Constitution forbidding preferences between ports, is shown to be unsound, since the preference clause of the Constitution and the uniformity clause were, in effect, in

framing the Constitution, treated, as respected their operation, as one and the same thing and embodied the same conception."

If in their operation these two clauses are one and the same thing, it follows that articles exported from the Philippines or Porto Rico can not be subject to duty any more than a duty can be laid on the same article exported from New York or Massachusetts, and that vessels from these islands can not be obliged to enter, clear, or pay duties in any of the ports of these States.

It is a part of the history of the Constitution that in vesting the General Government with these powers over commerce and taxation and thus restricting Congress in their exercise, it was the purpose of the makers that no walls impeding commerce should be erected between the States. No restrictions upon free intercourse between the States and its citizens were to be permitted either through State or Congressional action. The General Government could levy duties upon foreign merchandise, not domestic. As time has gone by the wisdom of these provisions, as tending to the solidarity of the nation, has become more and more manifest, and it is not thought that this court will reverse this policy or authorize its reversal by any other branch of the Government. As stated by Chief Justice Marshall in *Cohens* v. *Virginia*, 6 Wheat., 264, 414:

> "That the United States is for many and most important purposes a single nation has not yet been denied. In war we are one people. In making peace we are one people. *In all commercial relations we are one and the same people.*"

This right of free intercourse guarantees to every citizen of the United States the right to go with his property into any part thereof without let or hindrance. The single exception grows out of the power to regulate commerce among the Indian tribes, under which Congress can exclude the citizen from lands occupied by or reserved to the Indians. This right has been asserted by this court. In *Dred Scott* v. *Sanford*, 19 How., 398, 450, the court said:

> "The territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved."

And also said, p. 450:

> "And an act of Congress which deprives a citizen of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law."

And, p. 446:

> "And we are satisfied that no one who reads attentively the pages in Peters' Reports to which we have referred can suppose that the attention of the court was drawn for a moment to the question now before this court, or that it meant in that case to say that Congress had a right to prohibit a citizen of the United States from taking any property which he lawfully held into a Territory of the United States."

In *Crandall* v. *State of Nevada*, 6 Wall., 35, 48, 49, the court, quoting the dissenting opinion of Chief Justice Taney in the *Passenger Case*, 7 How., 283, 492, said:

> "After expressing his views fully in favor of the validity of the tax, which he said had exclusive reference to foreigners, so far as those cases were concerned, he proceeds to say, for the purpose of preventing misapprehension, so far as the tax affected American citizens it could not in his opinion be maintained. He then adds: 'Living as we do under a common Government, charged with the great concerns of the whole Union, every citizen of the United States from the most remote States or Territories is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State in the Union. . . . For all the great purposes for which the Federal Government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States. And a tax imposed by a State, for entering its territories or harbors, is inconsistent with the rights which belong to citizens of other States as members of the Union, and with the objects which that Union was intended to attain."

This was quoted at length and adopted in the *Slaughter House Case*, 16 Wall., 73, while Mr. Justice Bradley, in his dissenting opinion, went still farther, and said:

> "But even if the Constitution were silent, the fundamental privileges and immunities of citizens, as such, would be no less real and no less inviolable than they now are. It was not necessary to say in words that the citizens of the United States should have and exercise all the privileges of citizens; the privilege of buying, selling, and enjoying property; the privilege of engaging in any lawful employment for a livelihood; the privilege of resorting to the laws for redress of injuries, and the like. Their very citizenship conferred these privileges, if they did not possess them before. And these privileges they would enjoy whether they were citizens of any State or not. Inhabitants of Federal territories and new citizens, made such by annexation of territory or naturalization, though without any status as citizens of a State, could, nevertheless, as citizens of the United States, lay claim to every one of the privileges and immunities which have been enumerated; and among these none is more essential and fundamental than the right to follow such profession or employment as each one may choose, subject only to uniform regulations equally applicable to all."

The great debate in *Dred Scott* v. *Sanford* was as to the character of the property, whether a slave taken into a free State had not thereby become free, and it was held that he had not, because he was property, and as such his owner could, under the Constitution, take him into any part of the United States. In the case at bar the plaintiff in error was rightfully in the Philippines. The record shows he was there at the command and in the service of his country. This service did not forbid him to buy food or diamonds or any other article he chose to buy. He was not forbidden to loan money to his fellow soldiers. In

the eye of the law there is no war in the Philippines; at least commerce is not suspended. He purchased and acquired through loans the fourteen rings. He was ordered to San Francisco with his regiment and there discharged *cum laude*, bearing a wound received in the service of his country. After his discharge he is more grievously wounded by this seizure and the charge that he brought these rings here to defraud the revenue of his country in whose service he had often risked and nearly lost his life. The tariff act under which this seizure was made is entitled "An act to provide revenue for the Government and to encourage the industries of the United States," and it only purports to apply, and under the Constitution can only apply, to "articles imported from foreign countries." If the Philippine Islands are within that designation, then we, as a victorious nation, were swindled when we paid Spain twenty million dollars, and our army now in the Philippines is carrying on an unholy war of conquest and aggression, and not a necessary and just war to quell an insurrection and restore order in territory as much a part of the United States, and held by as impregnable a title, as Alaska, New Mexico, or Arizona.

The president was right when he said:

> "Our plain duty is to abolish all customs tariffs between the United States and Porto Rico and give her products free access to our markets." (Message, 1899, p. 50.)

The new school of construction in some way convinced him that he was in error in this statement, which is greatly to be regretted. It is supposed, however, that it is not executive or departmental action which this court will feel inclined to follow under the rule of *United States* v. *Dickinson*, 15 Pet., 161, and other cases.

Executive action has been the other way, unless we except some early cases in Louisiana and Florida relating to commerce from ports not yet in our possession, or only so temporarily.

In *Cross* v. *Harrison*, 16 How., 164, which we have quoted at page 19 of this brief, the Secretary of State held that the departments could exercise no power inconsistent with the Constitution, and that for this reason no import duties could be levied in California on articles of the growth or manufacture of the United States. This precedent was followed by the Secretary of the Treasury with reference to furs brought from Alaska after its cession to the United States. Synopsis Treasury Decisions, 1868, pp. 10, 20.

If the islands ceded by Spain are foreign territory, then our country would have as its commercial representatives therein consuls, who would perform the requisite official acts prescribed by our customs laws regarding shipments of merchandise from any of these islands to any part of the United States. The court takes judicial notice of the fact that our Government has no consuls in the Philippines, and that when Spanish sovereignty ceased in those islands the United States consuls therein were withdrawn, and that the consular agents of foreign powers thenceforth were the accredited representatives of the respective foreign governments to the United States, and our Government signed the exequatur of such consuls. In the treaty of peace with Spain it is provided in Article XIV as follows:

> "Spain shall have the power to establish consular offices in the ports and places of the territories the sovereignty over which has been either relinquished or ceded by the present treaty."

We are not aware that Spain has availed herself of the right to accredit consular officers to Cuba, Porto Rico, or the Philippines, but it is a matter of common knowledge that it is the intention of the Spanish Government to do so. What an anomaly it is to have Spain send its consuls to the Philippines if, as contended, for the purposes of revenue, they are still foreign territory! If they are not American territory, they must be still Spanish, for it is not pretended that any other nation foreign to the United States has acquired any sovereignty over them, nor is it pretended that the Philippine Islands, in the eye of international law, occupy the status of an independent nation.

Article XV of said treaty is as follows:

> "The Government of each country will, for the term of ten years, accord to the merchant vessels of the other country the same treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as it accords to its own merchant vessels not engaged in the coastwise trade.
>
> "This article may at any time be terminated on six months' notice to the other."

This article means that any Spanish vessel entering one of these island ports after the exchange of ratifications of the treaty of peace would be subject to the same charges as a vessel of the United States that cleared from some foreign port to the United States—that is to say, some vessel of the United States not engaged in the coastwise trade or in the carrying on commerce between ports each of which were within the sovereignty and jurisdiction of the United States. We therefore contend that Article XV, in making an exception in favor of the United States vessels engaged in the coastwise trade, contemplated that our Government might give exemption from such dues to its own vessels plying between any of these island ports and a port of the United States located on the Pacific, Atlantic, Gulf, or Lake region of the United States. To levy either the duties specified in such article or to levy an import duty upon goods shipped from the port of Manila to the port of San Francisco or Chicago would clearly be a discrimination which is forbidden by clauses 5 and 6, section 9, of Article I of the Constitution of the United States, as well as a violation of the principle of uniformity for which we contend in this case.

III.

If the Philippine Islands became a part of the United States by the exchange of ratifications of the treaty of peace; if the Government and the plaintiff in error both entered them under the authority of the Constitution with their respective rights defined and marked out; if the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved; if neither Congress nor the President can prohibit a citizen of the United States from taking any property which he lawfully held into a Territory of the United States, or from removing such property therefrom; if, as a citizen, he had the right in common with other citizens to pass and repass through every part of the United States without interruption, then the seizure of the property in question was wholly unwarranted and can hardly be dignified with the name of due process of law. All this is within the limits of the dis-

cussion already had, and the conditions and condemnation of the act of seizure are all substantially stated from prior decisions, in the language of this court.

We have also seen that the claim of the right to levy other duties than those prescribed by the general act, even upon foreign merchandise entering these ports, would violate the express provisions of the Constitution requiring uniformity; that no duty or preference can be laid upon commerce between these places and other parts of the United States; that they are not foreign ports, and therefore no duty can be laid on merchandise from that locality.

There is a further objection to the validity of any tax on commerce from the Philippines, which we briefly state. Congress has not acted. The taxes are only exacted through Executive order, issued July 12, 1898, as a war measure. The Executive has no legislative powers. It is submitted that this can not be sustained under *United States* v. *Eaton* (144 U. S., 677).

If it is claimed that the order is issued in the President's capacity as Commander in Chief, and as a military measure, we answer that we concede his right to make such an order as to "foreign merchandise" prior to the treaty of peace; that after such treaty and exchange of ratifications the tariff act was extended by its own force to these islands, and all he could lawfully do was to provide for its administration. That the Dingley law thus extended by its own terms and under the Constitution was limited to foreign merchandise, and that goods from the territory thus acquired destined to other parts of the United States, or *vice versa*, were not foreign merchandise. All these points are so settled in *Cross* v. *Harrison*, *supra*, and are likewise the necessary result of all the decisions of this court upon the subject of the acquisition of territory. And, finally, considering the character of the native inhabitants and their position under the law of nations, our forces are engaged in police duty, and the President has no more right to suspend the operation of the civil laws applicable in these islands than he would have if there should be an insurrection among the Indians in the Indian Territory or New Mexico and it should become necessary to send regular troops there to suppress it. Few would claim that the President, in his capacity as Commander in Chief, could direct that the Dingley tariff act should apply to all merchandise shipped into or from these Territories from other States and Territories.

In *Campbell* v. *Hall* (Cowper, 204, 208), Lord Mansfield and his associates had before them the question whether the King could, after the treaty of peace of February 10, 1763, with France, by which the island of Granada was ceded, and the proclamation thereof under the great seal on October 7, 1763, by which the governor thereof was empowered and directed to call general assemblies "in such manner and form as is used and directed in those colonies and provinces of America," and empowered to ordain laws for the public peace, welfare, and good government of the inhabitants of the island, by proclamation lay a tax of four and one-half cents on sugar, that being the tax imposed on that product from the Leeward Islands, and Granada in the capitulation prior to the cession by France having stipulated that its inhabitants should enjoy their properties and privileges in like manner "as the other His Majesty's subjects in the other British Leeward Islands.

It was held that the King could not impose this duty, and that his proclamation attempting to do so was void.

Lord Mansfield said:

"A great deal has been said and many authorities cited relative to propositions in which both sides seem to be perfectly agreed; and which, indeed, are too clear to be controverted. The stating some of these propositions which we think quite clear will lead us to see with greater perspicuity what is the question upon the first point, and upon what hinge it turns. I will state the propositions at large, and the first is this:

"A country conquered by the British arms becomes a dominion of the King in right of his crown; and therefore necessarily subject to the legislature, the Parliament of Great Britain.

"The second is, that the conquered inhabitants, once received under the King's protection, become subjects, and are to be universally considered in that light, not as enemies or aliens.

"The 3rd, that the articles of capitulation upon which the country is surrendered and the articles of peace by which it is ceded are sacred and inviolable according to their true intent and meaning.

"The 4th, that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations has no privilege distinct from the natives.

"The 5th, that the laws of a conquered country continue in force until they are altered by the conqueror; the absurd exception as to Pagans mentioned in Calvin's case shews the universality and antiquity of the maxim, for that distinction could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the Crusades. In the present case the capitulation expressly provides and agrees that they shall continue to be governed by their own laws until His Majesty's further pleasure be known.

"The 6th and last proposition is, that if the King (and when I say the King I always mean the King, without the concurrence of Parliament) has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate—that is, subordinate to his own authority in Parliament—he can not make any new change contrary to fundamental principles; he can not exempt an inhabitant from that particular dominion; as, for instance, from the laws of trade or from the power of Parliament, or give him privileges exclusive of his other subjects; and so in many other instances which might be put."

As such were the limitations upon the King's power at that time (1774), it seems absurd to claim that the President of the United States is in the year of our Lord 1900 absolved from "fundamental principles," and after the conclusion of peace and exchange of ratifications he can decree that territory acquired thereunder shall be deemed foreign as to merchandise shipped therefrom to the United States to evade the constitutional requirements of uniformity and domestic territory so far as shipments from New York to the Philippines is concerned to evade the prohibition against laying any duty upon articles exported from any State.

It is a startling proposition that a power denied to Parliament as inconsistent with liberty and consonant only with tyranny belongs to the Congress of the United States in one case, to the President thereof in another; that a power the assertion of which justified rebellion and a prolonged and bitter war to resist was carefully preserved in the very Government established as the result of such resistance; that our forefathers denied an omnipotent Parliament to decree an omnipotent Congress; that what was tyranny as to them in 1765–1776 is less than tyranny now. Time must be capable of changing principles if this proposition be true.

In this discussion we have not noticed or attempted to analyze the decisions of inferior courts on this subject. Believing all the questions ruled by the opinions of this court and accepted principles of constitutional construction, we have not thought it profitable to attempt to follow the course of argument by which such courts have sought to refer the question here. We gladly do likewise, confident that again this great court will prove the bulwark of our nation and preserve us from a colonial system often pronounced inconsistent with our institutions and liberties, both by the founders of our Government and by this court. In the great debates between Pitt, Camden, Barrè, and others on one side and Grenville, Townshend, Mansfield on the other the point at issue was this right to tax where there was no representation. Mr. Bancroft says of the contest, extending over a period of eleven years (3 Hist. of the U. S., 166):

> "It is the glory of England that the rightfulness of the stamp act was in England itself a subject of dispute. It could have been so nowhere else. The King of France taxed the French colonies as a matter of course; the King of Spain collected a revenue by his own will in Mexico and Peru, in Cuba and Porto Rico, and wherever he ruled; the states general of the Netherlands had no constitutional scruples about imposing duties on their outlying possessions. To England exclusively belongs the honor that between her and her colonies the question of right could arise; it is still more to her glory, as well as to her happiness and freedom, that in that contest her success was not possible. Her principles, her traditions, her liberty, her constitution all forbade that arbitrary rule should become her characteristic. The shaft aimed at her new colonial policy was tipped with a feather from her own wing."

The patriots on this side stood firmly with the friends of liberty on the other, and the words of Otis, Adams, Wythe, Washington, Franklin, and others inspire the reader with wonder at the wisdom and courage of the great men of the time. The virile remonstrances of the several colonies compare favorably with any public documents ever produced. These discussions made the writing of the Declaration of Independence easy and were a fit preparation for the long years of struggle and self-sacrifice necessary to maintain and establish the principles of that immortal production. We have since abolished slavery and have lived admittedly the foremost nation in all history in all that stands for liberty subject to law, a combination in which neither unbridled license nor unlimited discretion has any place. It is liberty guaranteed by laws made by a free people which is our boast and the object of our adoration. The words of Mr. Bancroft apply to this

argument in favor of free commerce between our new territories and other parts of the United States and to the claim of the right of arbitrary rule through the Executive or Congress, or both combined. It is to our country's glory as well as to her happiness and freedom that in this contest success is not possible. Our principles, our traditions, our liberty, our Constitution all forbid that arbitrary power shall become our characteristic. The shaft aimed at the new colonial policy is tipped with a feather from the American Constitution.

Respectfully submitted.

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